

## **REMARKS**

In the Office Action dated October 16, 2008, claims 1-22, 25, 69 and 71-89 are pending and under consideration. Claim 2 is allowed. Claims 1, 3-22, 25, 69 and 71-89 are rejected.

This Response addresses each of the Examiner's rejections. Applicants therefore respectfully submit that the present application is in condition for allowance. Favorable consideration of all pending claims is therefore respectfully requested.

### ***Non-Statutory Double Patenting***

Claims 1, 3-22, 25, 69 and 71-87 are rejected on the ground of non-statutory obviousness-type double patenting as allegedly unpatentable over claims 1-21 of U.S. Patent 7,367,934.

Claims 88-89 are rejected on the ground of non-statutory obviousness-type double patenting as allegedly unpatentable over claims 40 and 46, respectively, of U.S. Patent 6,955,639.

Without acquiescing to the Examiner's rejections, Applicants submit herewith a terminal disclaimer to disclaim the terminal portion of the patent granted on the present application which would extend beyond the expiration date of either of the commonly assigned U.S. Patent No. 6,955,639 or U.S. Patent No. 7,367,934. As such, the double patenting rejections are overcome and withdrawal thereof is respectfully requested.

### ***Allowable Subject Matter***

Claim 2 is found to be allowable. The Examiner states on Page 4 of the Action that the prior art does not teach or fairly suggest "a method ... wherein the metal nanoparticles are

administered in an amount to achieve a concentration in the animal of at least about 0.1% metal by weight."

Applicants simply wish to direct the Examiner's attention to the fact that the precise wording of claim 2 reads: "wherein said metal nanoparticles are administered to said animal in an amount to achieve a concentration *in said tissue or said population of cells in the animal* of at least about 0.1% metal by weight."

***Conclusion***

In view of the foregoing, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



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